

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

JENNIFER B.

Claimant,

v.

NORTH LOS ANGELES COUNTY
REGIONAL CENTER

Service Agency.

OAH Case No. 2010110491

DECISION

Administrative Law Judge Sophie C. Agopian, Office of Administrative Hearings, heard this matter on May 2, 2011, in Van Nuys, California. Claimant was present at the hearing and represented by her parents.¹ Rhonda Campbell, Contract Officer, represented the North Los Angeles Regional Center (Service Agency). Testimonial and documentary evidence was received and the matter was submitted for decision on the day of the hearing.

ISSUE

Whether claimant is eligible to receive services from Service Agency under the Lanterman Developmental Disabilities Services Act (Lanterman Act) and related regulations.

¹ The surnames of claimant and her family members are omitted for privacy purposes.

FACTUAL FINDINGS

1. Claimant seeks to obtain services from the Service Agency, but the Service Agency determined that she is not eligible to receive services under the Lanterman Act because her disability does not meet the eligibility criteria. Claimant properly appealed the Service Agency's decision and this hearing ensued.

2. Claimant is an unconserved 34 year-old woman. She has been diagnosed with a congenital disease, known as Freidreich's Ataxia. It is a progressive neurological condition that affects the cerebellum, which is a region of the brain that controls motor functioning and the heart. According to claimant's evidence, the cerebellum may also involve neurological functioning beyond motor control, such as cognition and emotions. (Claimant's Exhibit 2.)

3. Claimant established that her disease substantially impairs her ability to participate in major life activities that are appropriate for a woman of her age, including her ability to care for herself, speak and move. She cannot walk and uses an electric wheelchair for mobility. Her speech is audible but not always intelligible. She is unable to perform self-care tasks and other activities of daily living on her own and has not been able to get a job.

4. It is undisputed that Claimant began to experience physical manifestations of her disease prior to her 18th birthday. Prior to age 13, around the time she received her diagnosis, she had head, chest and back pain, difficulty with gross and fine motor activities, including walking and handwriting, and developed slowed and slurred speech. She started using a walker in high school, and by college, she was using a wheelchair.

5. Despite her physical limitations, claimant is capable of communicating, learning, and making decisions for herself. She has earned a college degree, and has lived independently while attending college. She has applied for several jobs although she has not been successful in getting hired. She manages her own finances and participates in some social activities. Her parents contend that she has only been able to achieve these milestones due to her receiving an abundance of support from friends and teachers over the years. While it is true that claimant has received accommodations for her disability while attending school, she earned a high school diploma with average to above average grades and completed a college entrance exam with scores sufficient to earn admission to California State University of Sacramento, where she graduated with a degree in graphic design.

6. Claimant did not exhibit any cognitive delays prior to reaching age 18.

7. Claimant's cognitive abilities were not formerly assessed until she was 29 years old and first sought regional center assistance. At the time of her assessment, she was living in a board and care facility with two housemates. It had been between two and four years since she had lived with her family. According to the cognitive test results, claimant's

intellectual abilities were estimated to be in the average range with some verbal abilities in the superior range. Specifically, her Verbal Intellectual Quotient (I.Q.) score was 99 and her Verbal Comprehension Index score was 105, both in the average range. Her adaptive functioning was in the low range for independence and socialization “most likely due to significant gross and fine motor difficulties.” (Service Agency’s Exhibit 13.) Her communication skills were in the adequate range. Because of her average intelligence, Service Agency determined that she did not qualify for a diagnosis of Mental Retardation, although it was determined that she required individual psychiatric therapy to help her cope with her physical condition and to obtain emotional support.

8. Claimant and her parents agree that claimant does not have Mental Retardation. Her parents contend, however, that claimant requires treatment similar to that required for individuals with Mental Retardation because she is substantially disabled in her adaptive functioning skills, particularly her social and communication skills, her motor abilities, her decision-making skills, and her daily living skills. As examples of her poor adaptive functioning, claimant’s parents testified that claimant becomes overwhelmed and emotional when there are changes to her routine, is irresponsible with money, and makes decisions that are not physically safe for her. Claimant’s former caregiver testified that it is common for claimant to exaggerate her abilities to perform daily living tasks.

9. Claimant’s parents contend that, without regional center services, claimant is unable to find a suitable place to live that will accommodate her deteriorating condition. Her parents are unable to accommodate her in their home and do not believe that she should live independently, as she did in college. When claimant lived in the board and care facility, it was not appropriate for her because it was a transitional facility where residents were recovering from, or learning to live with, spinal chord injuries. Claimant presently lives in a nursing home. She would prefer to live in a nursing center operated by United Cerebral Palsy, but was informed that only regional center clients are accepted into such centers. Claimant admits that her disease is not related to Cerebral Palsy.

10. Service Agency contends that claimant’s disease is more similar to Muscular Dystrophy, which is not recognized as a developmental disability under the Lanterman Act, rather than Mental Retardation or Cerebral Palsy because her disease has not had significant impacts on her cognitive functioning. Service Agency’s contention is persuasive.

LEGAL CONCLUSIONS

1. In this appeal, claimant has the burden of proof to show by a preponderance of the evidence that she is eligible for regional center services. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9; Evid. Code, § 500 [“a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.”])

2. The Lanterman Act (Welf. & Inst. Code, § 4500 et seq.) and implementing regulations define the conditions that qualify an individual for regional center services. For a person to be eligible for regional services, the person must meet all four of the eligibility criteria identified in the Lanterman Act. The person must have a “developmental disability,” as defined in the Act. (See Legal Conclusion 3.) The developmental disability must have originated before the individual attained the age of 18. The developmental disability must be likely to continue indefinitely, and it must constitute a substantial disability for the individual. (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000.)

3. A “developmental disability,” as defined in the Lanterman Act, is a disability attributable to any of the following four conditions, mental retardation, cerebral palsy, epilepsy and autism. Or, it may be attributable to unspecified disabling conditions, known as “fifth category” conditions. Fifth category conditions are those found to be “closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation...” (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000.) According to the Association of Regional Center Agencies’ (ARCA’s) interpretation of the regulations, the fifth category also includes an individual who “functions in a manner similar to that of a person with mental retardation.”

4. Claimant contends that her condition qualifies as a developmental disability because it meets all four of the eligibility criteria. Claimant established that she meets some of the criteria because her condition originated when she was a minor, it has continued and progressed through her life, and it constitutes a “substantial disability” for her. (Factual Findings 1 through 4.) Under the Lanterman Act, a “substantial disability” exists when there is a “significant functional limitation” in three or more areas affecting a major life activity, as determined by a regional center, and as appropriate to the age of the person. Areas affecting a major life activity include self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency. (§ 4512, subd. (l).) Claimant is substantially impaired with respect to her ability to live independently, get a job, move around, speak and care for herself. She is not substantially disabled in the areas of learning and self-direction.

5. Claimant does not meet all of the criteria to qualify for regional center services because she does not have a developmental disability as defined in Legal Conclusion 3, which is a threshold requirement. To establish a disabling condition similar to Mental Retardation, or one that causes an individual to “function as” an individual with Mental Retardation or require treatment similar to Mental Retardation, there must be some evidence of significant cognitive impairment prior to age 18. According to an excerpt from the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV- TR) (2000):

The essential feature of Mental Retardation is significantly subaverage general intellectual functioning that is accompanied by significant limitations in adaptive functioning in at least two of the following skill areas: communication, self-care, home living, social/interpersonal skills, use of

community resources, self-direction, functional academic skills, work, leisure, health, and safety. The onset must occur before age 18.

6. As set forth in Factual Findings 5 through 7, claimant did not establish that she exhibited delays in her cognitive functioning when she was a minor. In fact, although her condition is degenerative, her cognitive functioning at age 29 was estimated to be in the average range, which suggests that she had, at least, average intelligence prior to age 18. That she was able to graduate from high school and college and live independently for some time further corroborates that she was not cognitively impaired as a minor. Absent the essential feature of having “significantly subaverage general intellectual functioning,” claimant’s condition, even with its adaptive functioning impairments, is not comparable to Mental Retardation, and therefore does not qualify as a “fifth category” condition.

7. Claimant’s condition is more closely related to a physical handicap which is expressly excluded from the “fifth category.” Conditions that are “solely physical in nature” include “congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.” (Cal. Code Regs., tit. 17, § 54000, subds. (c)(3).) Although claimant established that her disease affects portions of her brain, mainly the parts that control her motor skills, she did not establish that she has cognitive impairments that require her to have “treatment similar to that required for mental retardation.” Accordingly, her condition does not qualify as a “fifth category” condition and she is ineligible for Service Agency services under the applicable law and regulations.

ORDER

Claimant Jennifer B.’s appeal is denied. The North Los Angeles County Regional Center’s determination that claimant is not eligible for Service Agency services is affirmed.

DATED: May 25, 2011

SOPHIE C. AGOPIAN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days.